

# **TECHNICAL ASSISTANCE – DUAL and/or OUTSIDE EMPLOYMENT**

## **INCLUDING EMPLOYMENT BY MORE THAN ONE DEPARTMENT OR AGENCY IN THE STATE PERSONNEL SYSTEM**

Prepared by the Division of Human Resources, Department of Personnel & Administration Revised April 2014.

### **OUTSIDE EMPLOYMENT**

Outside employment is defined as secondary employment with another state department or entity outside of the personnel system or an employer other than the State may be approved, depending on the specific situation. Outside employment is prohibited when perceived to be in violation of state ethics statutes (CRS 24-18-105 and CRS 24-18-201) or conflict of interest statutes (CRS 18-8-308 and CRS 24-50-507) with the duties and responsibilities of the state position. The ethic and conflict of interest statutes are applicable to all contracts and state that no current or past employee of the State should have any personal or beneficial interest in the service or property in an procurement agreement with the State. If the current or past state employee fails to disclose the conflict of interest prior to working as a contractor for the state, it could result in criminal action with a sentence of a class 2 misdemeanor.

As a general principle, state employees are expected to avoid situations involving private or personal interests (financial or non-financial) that may affect objectivity while performing official duties within the employee's authority. Employees cannot influence official actions that may or may appear to personally benefit the employee. For example, a current state employee also working as a director of a nonprofit organization that has been awarded a state grant - from the same program area and agency for which the employee is primarily employed – would likely violate the ethics and/or conflict of interest statutes referenced in the previous paragraph.

Employee's who engage in outside employment, must get advance written approval from their appointing authority before engaging in the additional employment. It is recommended that all departments and institutions of higher education develop policies and procedures for allowing outside employment, and communicate those policies to employees.

Personnel rule 1-14, specifically states, "Employees may engage in outside employment with advance written approval from the appointing authority. The appointing authority shall base approval on whether the outside employment interferes with the performance of the state job or is inconsistent with the interests of the state, including raising criticism or appearance of a conflict."

The Colorado State Employee Handbook outlines within the "Work Behavior" section that employees are expected to know and adhere to personnel rules, laws, and executive orders governing their employment and specifically addresses outside employment. The Handbook states, "Outside employment, either with another state department or an employer other than the state, or other activity (business transactions or ownership, volunteer positions, etc.) that is or could be perceived as incompatible with the duties and responsibilities of your state position is prohibited. You must get advance written approval from your appointing authority before engaging in outside employment. Failure to obtain approval before beginning outside employment may result in corrective or disciplinary action."

DPA recommends appointing authorities consider the following before approving an outside employment agreement request from an employee.

- If there is a possible or perceived violation of the state conflict of interest and/or ethic statutes.
- If the employee is using state resources to conduct the additional work, such as their state email and/or phone, using state time, or using a state vehicle to go to and from the outside employment.
- If there could be a conflict or violation of federal and state laws governing classification of a worker. Misclassification can occur when an employee is conducting additional work with the same or different state entity through a procurement process (working on a contract basis), which does not meet the Internal Revenue Service and state independent contractor status requirements.
- If the outside employment negatively impacts conduct of current state duties, such as requiring to adopt or change the employee's work hours, so that he or she can conduct the additional employment. This could create a hardship on other state employees or negatively impact services to the public.
- If the employee fails to disclose and get approval for his or her outside employment prior to conducting the additional work.

## **DUAL EMPLOYMENT WITH MORE THAN ONE DEPARTMENT OR AGENCY**

To avoid any federal and state legal ramifications, it is recommended that in a dual employment arrangement, the written agreement shall include the exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate. The overtime rate is either the regular rate from one of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime (Personnel Rule 3-32).

In order to comply with the Fair Labor Standards Act (FLSA), and various other state laws, such as those impacting the Public Employees Retirement Association (PERA), departments and employees must carefully communicate the conditions for employment and payments by all parties concerned. Each situation is unique and must be carefully examined in order to remain in compliance.

The department that first hires the employee on a permanent basis is considered the primary department, and the second employing department is considered the secondary department for purposes of this situation. A formal, written memorandum of understanding (MOU) between the three parties (primary, secondary, and employee) is required to ensure proper understanding, payments, and accountability.

Appendix A contains a sample memo of understanding agreement between two departments. The human resources offices in each department will likely coordinate and approve the agreement, along with the appointing authority. It is recommended that departments develop policies and procedures for allowing outside employment and dual employment agreements within their agency.

In every instance, written approval by the employee's primary appointing authority is necessary as required by Personnel rule 1-15. The employee is responsible for ensuring both departments are apprised of all aspects of employment conditions. This includes, but is not limited to, working conditions, type of work involved, and eligibility for overtime, hours worked and anticipated to work for the appropriate work period(s), and location of work. Personnel Rule 3-33, outlines the properly authorized dual employment agreement which includes the FLSA exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to the Personnel Board Rules and Director's Administrative Procedures or contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.



## APPENDIX A – Sample Agreement

### Dual Employment Agreement and Memorandum of Understanding (MOU)

Director's Procedure 3-33 titled: Dual Employment states; "In a properly authorized dual employment arrangement, the written agreement shall include the exemption status designation based on the combined duties, the department responsible for paying any overtime, and the overtime hourly rate. The overtime rate is either the regular rate from one of the jobs or a weighted rate from both jobs. Work time from both jobs is combined to calculate overtime."

Because you are employed full (or part) time with another state agency you are being hired with the understanding that you will be compensated for your employment with the (secondary department) to perform duties as (classification title) for which you will be compensated at the rate of (\$) per hour (regular rate not at time & one half). You understand that all applicable taxes, retirement benefits and other required benefits will be taken from this pay and that your compensation will be based solely on this classification.

Your signature on this document will allow (secondary department) to employ you with this classification and pay rate. Adjustments to pay will occur as appropriate and required according to State Personnel System rules. You also understand that this agreement can be severed by any party (primary employer, secondary employer or employee) at any time as necessary and appropriate following all rules and procedures afforded to this temporary arrangement. No retention or re-employment rights are afforded to this temporary arrangement and the position is viewed at-will for purposes of unemployment. This agreement will be reviewed and renewed annually at state fiscal year end.

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#### EMPLOYEE AGREEMENT

I \_\_\_\_\_ do voluntarily, without coercion, understand that this is temporary employment for which I may be entitled to overtime compensation at the rate indicated above for the title indicated above. I understand that there will be no guarantee of continued employment and that I may be separated from employment at any time for any reason without notice of layoff or retention rights by either the primary or secondary state agency.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## PRIMARY AND SECONDARY DEPARTMENT AGREEMENT

*I understand that \_\_\_\_\_ will be working for the (secondary department) performing duties at the classification of \_\_\_\_\_ for which the (secondary department) agrees to pay all overtime wages and PERA & Medicare benefits to which the employee is entitled. I agree to allow this employee to perform these functions during hours for which he/she is not expected to work for our agency and agree that this arrangement is in the best interests of all parties concerned and does not conflict with our commitment and expectations to perform their primary functions for our agency. I understand that the employee will be paid at the classification and rate above for the overtime rate for all hours they work above 40 hours in a one-week period.*

### WORKER'S COMPENSATION

As primary employer I expect and agree to process all worker's compensation injuries through our agency and will expect (secondary department) to work through our agency for injuries that would occur while working for the (secondary department).

\_\_\_\_\_  
Appointing Authority, Primary Agency

Date \_\_\_\_\_

\_\_\_\_\_  
Human Resources Approval, Primary Agency

Date \_\_\_\_\_

I agree to comply with all of the above:

\_\_\_\_\_  
Appointing Authority, Secondary Agency

Date \_\_\_\_\_

\_\_\_\_\_  
Human Resources Approval, Secondary Agency

Date \_\_\_\_\_

TECHNICAL GUIDANCE  
DHR APPROVAL FOR PUBLICATION

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